

MEETING OF THE
DISTRICT OF COLUMBIA STATEHOOD
CONSTITUTIONAL CONVENTION

- - -

Monday, May 24, 1982

5:18 p.m.

Ninth Floor Auditorium
10th and E Streets, N. W.
Washington, D. C.

P R O C E E D I N G S

(5:18 p.m.)

MR. BALDWIN: The meeting will please come to order.
We will now observe a silent moment of prayer.

(A moment of meditation.)

MR. BALDWIN: Mr. Secretary, will you please call
the roll?

(Secretary Cooper called the roll as follows:)

Mr. Baldwin, here; Mr. Barnes, present; Mr. Blount,
no response; Mr. Bruning, here; Mr. Cassell, no response; Mr.
Clark, no response; Mr. Coates, no response; Mr. Cooper,
present; Ms. Corn, no response.

MR. BALDWIN: Delegate Hilda Mason, delegate
Robinson, delegate Talmadge Moore, delegate Love, the roll is
being called.

(Secretary Cooper continued the roll call as follows:)

Mr. Croft, no response; Ms. Eichhorn, no response;
Ms. Feeley, no response; Ms. Freeman, here; Mr. Garner, no
response; Ms. Graham, here; Ms. Harris, here; Ms. Holmes, no
response; Mr. Jackson, present; Ms. Johnson, present; Ms.
Jones, no response; Mr. Jordan, no response; Mr. Kameny, here.

MS. JONES: I'm present, Mr. Secretary.

MR. BALDWIN: Delegate Jones says she's present.

(Secretary Cooper continued the roll call as follows:)

Ms. Lockridge, here; Mr. Long, here; Mr. Love, here;
Ms. Maguire, here; Mr. Marcus --

MR. MARCUS: Good evening, Mr. Secretary.

MR. COOPER: Good evening.

(Secretary Cooper continued the roll call as follows:)

Mr. Mason, here; Ms. Mason, here; Mr. B. Moore,
present; Mr. J. Moore, present; Mr. T. Moore, here; Ms.
Nahikian, no response; Mr. Nixon, no response; Mr. Oulahan,
here; Ms. Paramore, no response; Mr. Robinson, here; Mr.
Rothschild, here; Mr. Schrag, here; Ms. Shelton, no response;
Ms. Simmons, present; Ms. Street, here; Mr. Terrell, no
response; Mr. Thomas, here; Ms. Warren, no response.

MR. COOPER: Mr. Chair, 28 delegates answering the
roll.

MS. HOLMES: You didn't call my name.

MR. COOPER: Yes, I did.

MR. BALDWIN: Do you have delegate Holmes checked
as present?

MR. COOPER: Delegate Holmes?

MS. HOLMES: Here.

MR. BALDWIN: Are there other delegates who feel
their names were not called or they are not sure? Delegate

Jones?

MR. COOPER: They were called.

MR. BALDWIN: Okay, he has delegate Jones.

The next item on the agenda is second reading of the judiciary article. We will spend one hour in completing that article, at tops. In fact, we do not need one hour. We have read many times the rules that pertain to second readings, and we will follow those rules tonight.

I know you realize that we have different chairs. I'll wait until the committee --

MR. JACKSON: We will start in one hour?

MR. BALDWIN: Yes.

(Pause.)

MR. BALDWIN: Delegate Moore, at 6:30 or thereabouts, we'll resume with your committee.

MR. J. MOORE: All right.

(Pause.)

MR. BALDWIN: We'll ask delegate Blount, the chairperson of the Judiciary Committee, to come forward, please.

The Chair was informed by the secretary that we should begin second reading on the judiciary at Section 10. So, I'll repeat the rules very briefly again, and I'm sure

you're familiar with them. There are two ways that you may amend at second reading. One is when there's some inconsistency, and the other one is when you failed to get your amendment to the substantive committee prior to first reading, and the chairperson of that particular committee would waive and allow you to do that. Those are the only two ways you can amend.

If he waives and allows you to present an amendment, it will require a two-thirds vote for the amendment. But to adopt the article, it only requires a simple majority.

MS. GRAHAM: Mr. President, there is an amendment to Section 10, "Retention Elections." Mr. Jordan is not here, but Mr. Schrag is familiar with that, and I'd like at this time -- or should I read the whole section and come back to that?

MR. BALDWIN: I was told that the minutes reflect that Mr. Jordan was allowed, and was told by President Cassell that he would be allowed to have his amendment put in today.

MS. GRAHAM: Is it proper to put it in now, Mr. President?

MR. BALDWIN: If it deals with Section 10.

MS. GRAHAM: Yes. Mr. Schrag?

MR. SCHRAG: I'm sorry that Mr. Jordan isn't here

at the moment to speak for his amendment; perhaps he'll arrive in the next few minutes.

MR. BALDWIN: So that everyone will understand, we'll ask -- some people probably were not here Saturday, so we'll ask the chairperson, delegate Graham, to move the adoption of your section, Section 10, and then ask someone to again put in the Jordan amendment, so that all delegates will know exactly what we are voting or debating on.

MS. GRAHAM: Thank you. Mr. President, should I read the whole thing again?

MR. BALDWIN: No. You just say, "I move the adoption of Section 10."

MS. GRAHAM: Mr. President, I move the adoption of Section 10, "Retention Elections."

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we adopt Section 10, "Retention Elections." The Chair understands that there is an amendment, the Jordan amendment. Will someone read it? I guess Mr. Schrag will read that amendment, so all of us will know the substance of that amendment.

MR. SCHRAG: Mr. President, the Jordan amendment would put a period on line 24 after the word "years"; put a

period on line 24 after the word "years," and strike the rest of the sentence. This was moved and seconded on Saturday, and I will speak for it very briefly.

MS. JONES: Could you state that again?

MR. SCHRAG: Pardon me?

MR. BALDWIN: The Jordan amendment is on line 24, to put a period after "years," and strike or delete the remaining sentence, "for a Supreme Court Justice, and every six years for a Superior Court Judge."

MR. SCHRAG: A period after the first time the word "years" appears at the beginning of the line, so that the sentence would read, "An additional retention election shall be held every ten years."

The effect of this amendment would be to make consistent the frequency with which all of the judges, superior and supreme court, had to run in retention elections. Mr. Jordan distributed his statement at the time he distributed a copy of this amendment to all delegates.

He says in his written statement, "At present, the judiciary article requires retention elections every ten years for supreme court justices and every six years for superior court justices. I said at the time I proposed what is now Section 10 that I did not intend to be inflexible about the

frequency of retention elections. This amendment would set the frequency of such elections at uniform, ten-year intervals for all of the judges."

Now, the purpose of this amendment is simply to give us a more independent judiciary, a judiciary that was only running every ten years, while at the same time preserving the principle of the Jordan amendment -- the retention election procedure that was approved on first reading. It is a slight change in the system that Jordan gave us and that the body approved, but it is not a removal of that system. It retains the retention election system.

I think that it would make that system somewhat more palatable to the voters and to the bar of the District of Columbia, which is used to having not a retention election system at all, but a system of peer review and removal on peer review. And I think that to jump all the way from a peer review system to a six-year election cycle is a bit of a rapid move, and I think that it would be more in keeping with a slow, orderly transition to our new system to have these elections every ten years rather than every six for most of these judges.

I think the issues are clear and simple. Mr. Love will, I know, tell you that most states have more frequent elections, such as every six years for their trial judges, but

we don't. Some other states don't; it's true that a majority of them do have more frequent elections. For us, it's a big bump. That's all there is to be said for this.

MR. BALDWIN: Delegates Samuel Robinson, Love and Talmadge Moore.

MR. ROBINSON: Thank you. I stand to speak in favor of the amendment, as submitted by delegate Jordan. Initially, I was opposed to submitting the judges to any sort of retention elections, but given the success of the retention elections in certain states of this Union, I can now accept the ten-year period for an election. Also, I would urge my fellow delegates to support the Jordan amendment.

MR. BALDWIN: Delegate Love?

MR. LOVE: Fellow delegates, I have passed out two tables to all of you to give you some idea of exactly where we stand. The first of these tables points out that for this level of courts, 32 states elect these judges directly. They don't worry about retention elections or nominating commissions; they just elect the judges straight out.

We have already decided not to elect judges. Those judges are going to be appointed by a nominating committee. If you look on page 2, you will say the length of terms that these various judges serve in office for. If you look under

the third column where it says "GT," that is our court that we're talking about, the superior court.

At present, 23 states have superior court judges serving for six years; 9 states have them serving for four years. The vast majority of states do not allow superior court judges to be in for anywhere near ten years.

Currently, our judges are in for 15 years. If you read the paper two days ago, you will see that by the end of the year, of those 43 judges, Ronald Reagan will have appointed 10, and he is halfway through his term. As it stands, those people will be able to stay in office for 15 years before anything happens to them.

I would urge, under the circumstances, that we maintain the present six-year term, which Mr. Jordan originally proposed and which is consistent with the Alaska model that we used. I would point out that many of you have talked to Mr. Jordan and know he really does not care what this number of years is. He put this amendment in because he was asked to do so by certain lawyers in the convention. But, in reality, he would be just as happy with six years.

I would urge you to stay with the six years. It leaves us consistent with the other states, and it also means that we are not going to have a system which will go for

decades before it will finally reflect the population of the District of Columbia. Thank you.

MR. BALDWIN: Delegate Talmadge Moore?

MR. T. MOORE: Delegate Love has already expressed my ideas. I would be opposed to the amendment because I think that people should have a shorter time to review the judges' qualifications as to whether they should be reappointed or not, in lieu of the ten years, which is a change. I would go with the original language that Mr. Jordan submitted.

MR. BALDWIN: Thank you, delegate Moore. Delegate Blount?

MR. BLOUNT: I support the amendment. We have discussed this amendment previously, and the fact that President Ronald Reagan has made some appointments does not enter into it. It could be just the opposite; it could be a Democratic President who is making these appointments. So, that's not a very good reason.

I would urge the delegates to support this amendment because it gives us uniformity and I think it's best.

MR. THOMAS: Point of information, Mr. Chairman. I would like to say I'm very confused about the whole thing because I got the word that Mr. Jordan had to put this amendment in for political reasons. I want the record to show how

I feel about it.

I'm against it, but I'm going to wait until the constitution comes to my ward, and then I'll decide what I'm going to do about it because I think Mr. Oulahan and Mr. Schrag have "pull" in this convention as far as this article is concerned. It isn't right.

MR. BALDWIN: Delegate Thomas, please refrain from calling names.

MR. THOMAS: Well, I have to say where the problem is.

MR. BALDWIN: At this point, we've heard three for and three against. Can we now, by consensus, terminate debate?

MR. LOVE: Yes.

MR. BALDWIN: Those in favor, signify by saying yes.

(A chorus of "yeses.")

MR. BALDWIN: Opposed, nay.

(There were four "nays.")

MR. BALDWIN: We have terminated debate, and at this point we will vote on the Jordan amendment. Those in favor of the Jordan amendment, signify by saying yes.

(A chorus of "yeses.")

MR. BALDWIN: Those opposed, nay.

(A chorus of "nays.")

MR. BALDWIN: Abstentions?

(No response.)

MS. LOCKRIDGE: Can I call a division, Mr. Chairman?

MR. BALDWIN: Yes, you may.

Those in favor of the Jordan amendment, signify by a show of hands.

MR. COOPER: Twelve.

MR. BALDWIN: Those opposed, likewise.

MR. COOPER: Fourteen.

MR. BALDWIN: Abstentions?

MR. COOPER: There are none.

MR. BALDWIN: The Jordan amendment was rejected.
We're now back to the main motion.

MS. GRAHAM: Mr. President, I move the adoption of Section 10, "Retention Elections."

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we adopt Section 10, "Retention Elections." Those in favor, signify by a show of hands. This is on the adoption of Section 10.

MR. COOPER: Twenty-three.

MR. BALDWIN: Those in opposition, likewise.

MR. COOPER: Three.

MR. BALDWIN: Abstentions, please.

MR. COOPER: There are none.

MR. BALDWIN: Section 10 has been adopted. Section 11, delegate Graham.

MS. GRAHAM: Section 11, Mr. President, "Commission on Judicial Disabilities and Tenure. (A) Qualifications. The Commission on Judicial" --

MR. BALDWIN: I'm sorry; we're not supposed to read. Make your motion to adopt.

MS. GRAHAM: All right. I move the adoption of Section 11, "Commission on Judicial Disabilities and Tenure," Mr. President.

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we adopt on second reading Section 11. Discussion? Delegate Simmons?

MS. SIMMONS: I move the previous question, Mr. President.

MR. BALDWIN: Can we, by consensus, terminate debate?

MR. COOPER: Yes.

MS. HARRIS: Yes.

MR. BALDWIN: So ordered. Those in favor of

adopting Section 11, please signify by a show of hands.

MR. COOPER: Twenty-three.

MR. BALDWIN: Those in opposition, likewise.

MR. COOPER: One.

MR. BALDWIN: Abstentions?

MR. COOPER: There are none.

MR. BALDWIN: Section 11 has been adopted. Section 12, Madam Chairperson.

MS. SIMMONS: That was only (A), wasn't it?

MS. GRAHAM: Section (A).

MR. BALDWIN: Section (A)?

MS. GRAHAM: Don't we go to (B)?

MR. BALDWIN: Oh, yes; I'm sorry. Section 11(B)?

MS. GRAHAM: Mr. President, I move the adoption of Section 11(B), "Selection."

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we adopt Section 11(B). Discussion?

(No response.)

MR. BALDWIN: Discussion? Delegate Simmons?

MS. SIMMONS: I move the previous question, Mr. President.

MR. BALDWIN: The previous question has been called

for. Can we agree by general consensus?

MR. COOPER: Yes.

MS. GRAHAM: Agreed.

MR. BALDWIN: So adopted.

MS. GRAHAM: I move the adoption of Section 11(C),
"Procedure."

MR. BALDWIN: I think we need on Section (B) -- we
just terminated debate.

MS. GRAHAM: Oh, I'm sorry.

MR. BALDWIN: Those in favor of adopting Section
11(B), signify by a show of hands.

MR. COOPER: Twenty-two.

MR. BALDWIN: Those in opposition, a show of hands.

MR. COOPER: None.

MR. BALDWIN: Abstentions?

MR. COOPER: One.

MR. BALDWIN: Section 11(B) has been adopted.

MS. GRAHAM: Mr. President, I move the adoption of
11(C), "Procedure."

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded
that we adopt Section 11(C), "Procedure," on second reading.
Discussion?

(No response.)

MR. BALDWIN: Can we, by general consensus -- since there are no hands up for discussion, can we, by general consensus, terminate debate? There's really no debate.

Those in favor of adopting Section 11(C), signify by saying yes.

(A chorus of "yeses.")

MR. BALDWIN: Those in opposition, nay.

(No response.)

MR. BALDWIN: Abstentions?

(No response.)

MR. BALDWIN: Section 11(C) has been adopted.

MS. GRAHAM: Mr. President, I move the adoption of Sections 11(A), (B) and (C).

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we adopt Section 11 in toto. Those in favor, signify by saying yes.

(A chorus of "yeses.")

MR. BALDWIN: Those in opposition, nay.

(No response.)

MR. BALDWIN: Abstentions?

(No response.)

MR. BALDWIN: Section 11 has been adopted.

MS. GRAHAM: Mr. President, I move the adoption of Section 12, "Removal, Suspension and Involuntary Retirement of Judges and Justices."

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we adopt Section 12. Discussion?

(No response.)

MR. BALDWIN: Discussion?

(No response.)

MR. BALDWIN: Those in favor of adopting Section 12, signify by a show of hands.

MR. COOPER: Twenty.

MR. BALDWIN: Those in opposition, likewise.

MR. COOPER: None.

MR. BALDWIN: Abstentions?

MR. COOPER: None.

MR. BALDWIN: Section 12 has been adopted.

MS. GRAHAM: Mr. President, I move the adoption of Section 13, "Administration."

MR. BALDWIN: Is there a second?

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded

that we adopt Section 13, "Administration." Discussion?

(No response.)

MR. BALDWIN: Is there discussion on Section 13?
Discussion?

(No response.)

MR. BALDWIN: Those in favor of adopting Section 13,
signify by saying yes.

(A chorus of "yeses.")

MR. BALDWIN: Those in opposition, nay.

(No response.)

MR. BALDWIN: Abstentions?

(No response.)

MR. BALDWIN: Section 13 has been adopted.

MS. GRAHAM: Mr. President, we have an amendment to
Section 14, "Financing." Should I read that? It has been
distributed.

MR. BALDWIN: No. We need to question the amendment.
Number one, who is the maker of it, and has the chairman of
that particular committee, Mr. Blount, waived?

MR. COOPER: The section isn't on the floor yet.

MS. GRAHAM: They have signed that and waived it.

MR. BALDWIN: Just one second. The secretary just
reminded me; you must put it on the floor each time. You know,

"I move that we adopt section" --

MS. GRAHAM: I move that we adopt the new section, amendment to judiciary article, Section 14.

MR. BALDWIN: I'm sorry. Delegate Graham?

MS. GRAHAM: Yes?

MR. BALDWIN: You move to adopt Section 14.

MS. GRAHAM: All right. I move to adopt Section 14, "Financing."

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we adopt Section 14, "Financing." We do have an amendment, delegate Graham has informed us. Is it an amendment or a replacement for the whole section?

MS. GRAHAM: Well, I think it has a little bit of that. It's a replacement for the whole section.

MR. BALDWIN: That would be a substitute motion, but let's just treat it as an amendment.

MS. GRAHAM: All right.

MR. BALDWIN: You may proceed.

MS. GRAHAM: "Before each fiscal period, the chief justice of the supreme court shall submit to the governor a budget for the judicial system, including detailed estimates and necessary appropriations and expenditures, full-term

operating and capital improvement projections, and a qualitative and quantitative description of court activities. The governor shall transmit the proposed budget to the legislature without changing it, but may make recommendations with respect to it. The governor shall not be required to propose revenues to fund the entire submission, but must propose revenues to finance that portion of the proposed budget recommended for acceptance by the legislature."

MR. BALDWIN: Were all delegates informed of that substitute in writing?

MS. HARRIS: No.

MS. GRAHAM: They should have received it, Mr. President.

MR. BALDWIN: In their boxes?

MS. GRAHAM: In their boxes.

MS. HARRIS: No, it's not in our boxes. No, we do not have them.

MR. BALDWIN: Is there a delegate that might have a question regarding -- you don't really understand what was read?

MS. HARRIS: We don't have copies.

MR. BALDWIN: Just a second, please. The question is, even if you did receive it, is there a question regarding

the substitute motion, because I'm sure you can't vote on it unless you fully understand? Delegate Cooper?

MR. COOPER: Yes. It's my understanding that this was language that was worked out between the language that was adopted by the Committee on Finance and Tax and the previous language that was adopted in Section 14.

MR. SCHRAG: Precisely so, Mr. Cooper.

MR. BALDWIN: Thank you.

MR. SCHRAG: It is an amalgamation of what was passed on the floor in Finance and Tax and what was passed on the floor during Judiciary, and the Style and Drafting Committee has put these two things together so that both of them appear in the same section and they are all in one place.

MR. BALDWIN: The Chair has been informed that this exact language has been passed to you. But if you still have questions, be sure you understand before you vote what you're voting on.

MS. HARRIS: Mr. President, may I ask delegate Graham to reread that proposal?

MS. GRAHAM: Madam President, I passed the proposal to delegate Cooper.

MS. HARRIS: We don't have copies. No, that's not it. We don't have copies.

MR. KAMENY: It was a long time ago.

MR. SCHRAG: You got that a week ago.

MS. HARRIS: We don't have copies.

MR. BALDWIN: Staff at this point will make copies. We'll move to Section 15, and once staff comes in with copies for everyone, then we'll revert back to 14.

MR. COOPER: May I suggest we pass on it, because the language was kind of agreed upon?

MS. GRAHAM: Yes.

MR. BALDWIN: But we have so many delegates who say they don't have it, and so we need to put it in their hands.

MS. GRAHAM: Thank you, Mr. President.

MR. BALDWIN: Thank you.

MS. GRAHAM: Mr. President, I move the adoption of Section 15, "Rulemaking."

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we adopt Section 15, "Rulemaking." Discussion?

(No response.)

MR. BALDWIN: Discussion?

(No response.)

MR. BALDWIN: Those in favor of adopting Section 15, "Rulemaking," signify by saying yes.

(A chorus of "yeses.")

MR. BALDWIN: Those opposed, nay.

(No response.)

MR. BALDWIN: Abstentions?

(No response.)

MR. BALDWIN: Section 15 has been adopted.

MS. GRAHAM: Mr. President, I move the adoption of Section 16, "Vacancies in Judicial Commissions."

MR. BALDWIN: Was it seconded?

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we adopt Section 16, "Vacancies in Judicial Commissions." Discussion?

(No response.)

MR. BALDWIN: Is there discussion?

MR. COOPER: I move the previous question.

MR. BALDWIN: The previous question has been called for, and we'll do it by consensus unless someone objects. Debate has been terminated. Those in favor of adopting Section 16, signify by saying yes.

(A chorus of "yeses.")

MR. BALDWIN: Those in opposition, nay.

(No response.)

MR. BALDWIN: Abstentions?

(No response.)

MR. BALDWIN: Section 17?

MS. GRAHAM: Mr. President, I move the adoption of Section 17, "Definition."

MR. BALDWIN: Is there a second?

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we adopt Section 17, "Definition." Discussion?

MS. HARRIS: Yes.

MR. BALDWIN: There is an amendment?

MS. HARRIS: Yes.

MR. BALDWIN: Was the amendment circulated, and has the chairman of the Judiciary Committee waived?

MR. BLOUNT: No, I haven't.

MS. HARRIS: No, but it has to do with Style and Drafting's placement of this. It has nothing to do with --

MS. GRAHAM: You're talking about the placement, Madam President?

MS. HARRIS: The placement, yes.

MR. BALDWIN: We don't need a motion for that.

MS. HARRIS: Okay.

MR. BALDWIN: You refer that to Style and Drafting

with your proper instruction of where you would like to see it placed.

MS. HARRIS: Okay. Delegate Graham, in the original draft "practice of law" was defined in the text of the article in which it was first used, which was Section 4, "Qualifications." In subsection (b), "practice of law" was used there for the first time. It seems to me it would be clearer to the reader if the term "practice of law" is defined in the body of the article and not at the end under "Definition."

I looked through many constitutions and I did not see a definition at the end of a constitution. "Practice of law" should be included in the text or a footnote on the same page, which will be readily defined.

MS. GRAHAM: Madam President, we discussed that in our Style and Drafting meeting. We felt that the position of where it is now was the best place for it. However, we will be happy to have you attend one of our meetings and discuss it with us.

MS. HARRIS: Okay. What I'm trying to say is I don't think I need to attend a meeting. What it does here is that a person, in reading Section 4 on the second page, has to go through and look at the end of the article to determine what "practice of law" means. And it seems to me that all you have

to do is put in parentheses the meaning, which is teaching in a law school or employed as a lawyer in the state. That would be taken care of in the body of the text.

MS. GRAHAM: Yes. Madam President, when you get the copies back, you will see we tried to refrain from parentheses. We will consider this at our next meeting for third reading.

MS. HARRIS: Is it in order to move, Mr. President, that this be deleted because it's not a substantive section?

MR. BALDWIN: Delegate Jones wants to comment.
Delegate Jones?

MS. JONES: I need to ask a question. Are we going to have some glossary or something that accompanies the constitution? Why would we put a definition in as a section?

MR. BALDWIN: That's a very good point. Technically, delegate Jones, definitions should appear in the section that is reserved for what we call a report or an analysis. And your question of why it's part of the body of our constitution is well taken.

Hopefully, Style and Drafting will, in fact, deal with that without the body having to discuss for 10, 15, 20 minutes, defining terms in our constitution.

MS. GRAHAM: Mr. President, we have some other terms defined, and we used some guidelines and we made a decision on

doing that. I would be happy to invite any of you to attend a meeting and we could discuss that further.

MS. HARRIS: Okay. Delegate Baldwin, what this does, in fact -- for Style and Drafting to add a section called "Definition" is not what was voted on by the body. They have put in a section that we did not have in the original draft, and it is not a substantive section. So, they have really amended the original article that was passed on.

MR. BALDWIN: Delegate Talmadge Moore?

MR. T. MOORE: I wanted to ask the committee whether they have these definitions in the body of any other constitutions. It appears to me that if you have any definitions, like was brought out previously, they either should be in a special section or should not be in the body of the substantive language.

MS. GRAHAM: You will find when the draft comes to you for review that every change that we have made has been in accordance with our stylistic ideas. If they ought to be changed, then I wish you would attend a meeting and let us discuss it. That's the only thing I can say at this point.

However, if you say "take it out," there's nothing we can do but go ahead and do it.

MR. T. MOORE: But my question was, Madam Chairman,

has this been found in any other state constitution in that manner?

MS. GRAHAM: Yes.

MR. T. MOORE: It has?

MS. GRAHAM: Maybe not in that manner, but certainly within it.

MR. T. MOORE: In the body?

MS. GRAHAM: Yes.

MR. T. MOORE: In the middle of it?

MS. GRAHAM: I'm not sure exactly where it's found, no.

MR. BALDWIN: Delegate Cooper?

MR. COOPER: Yes. Mine is a point of inquiry, Mr. Chair. Would it be in order for this body, then, in an effort to resolve this matter of definition, to cast an affirmative vote as to how we desire to have those definitions appear, whether they be inserted in text, whether they appear at the end of articles, or whether they be in a glossary that accompanies this constitution?

MR. BALDWIN: That point, delegate Cooper, is well taken, and I'm about to turn it over to the assembly in view of delegate Talmadge Moore's concern. It appears to me to be a consensus. I'm just saying it appears to me, and your vote

will show in a second if you do, in fact, want all definitions and those kinds of things to be in the report. If that's what you want, then someone needs to make a motion and we can then officially instruct Style and Drafting that that's the will of the body.

MS. HARRIS: May I make a motion?

MR. BALDWIN: Before we make a motion, let's at least hear from Style and Drafting -- another person. Delegate Mason?

MS. MASON: I thank you, Mr. Chairman. Mr. Chairman and members of the delegation, I have in my hand the constitution of Hawaii, in which they have a section on definitions for some of their articles. So, it does appear in constitutions. I don't have the others with me, but it does appear in other constitutions.

MR. BALDWIN: That is some information that delegate Mason has shared with us, that it has been done. So, she identified at least one other constitution where they, in fact, define terms within the body.

Delegate Oulahan?

MR. OULAHAN: Mr. President, I'd like to point to delegate Jones and her objection to any kind of definition, particularly "practice of law." "Practice of law" has been

defined over the years in a whole series of decisions. It would be almost impossible to define, in five or ten lines, what constituted "practice of law." It should be left to the courts.

MR. BALDWIN: The Chair senses the mood of this group at this point. We will now allow the assembly to determine whether or not you want to instruct Style and Drafting to delete Section 17.

MS. HARRIS: Point of information.

MR. SCHRAG: Mr. President?

MR. BALDWIN: We'll only hear from one other person on Style and Drafting. The body has heard from almost all of you now; just one other person. Let's allow the assembly to determine where they want to place it.

MR. SCHRAG: Mr. President, there are three choices. One is to put it here at the end of the article, another is to put it right in the middle of the article, and a third, which I think is not really a valid choice, would be what you have suggested, to take it out of the article and put it in the report.

It would not be a proper choice to put it in the report because --

MR. BALDWIN: The Chair did not suggest that. The

Chair is only saying that this body will determine it, and therefore we'll vote in a second.

MR. SCHRAG: I stand corrected. It should not be put in the report because it does affect the meaning of the article, as passed on first reading; that is, on first reading, we included the following sentence in the text. It's in Section 3.14(c), and it's right in the middle of the text and it says, "The term 'practice of law' in this section and in Section 3.16 refers to the experience specified in Section 3.11(b)."

Now, that's really a jaw-breaker, right in the middle of the text, and what we have done in Style and Drafting is simply taken that piece of law which is a part of the constitution and made it a little more readable and moved it to the end where it doesn't break up the flow of the text.

So, we have moved it to a more reasonable place in the constitution.

MR. BALDWIN: You've heards the pros and cons. What is your pleasure?

MS. HARRIS: May I make the motion?

MR. BALDWIN: Yes, you may.

MS. HARRIS: I would like to move that the term "practice of law" -- the definition of that -- be placed

— within the text in Section 4, subsection (2), line 10.

(The motion was duly seconded.)

MR. BALDWIN: What is it now? Just tell me so I can write mine down.

MS. HARRIS: Section 4, subsection (2), line 10.

MR. BALDWIN: It has been moved and properly seconded that we delete and transfer Section 17, "Definition," to Section 4, subsection (2), line 10.

MS. HARRIS: May I speak last, Mr. Chair?

MR. BALDWIN: Discussion? Delegate Kameny?

MR. KAMENY: While I suppose the body has the right, if it votes by a sufficiently large majority, to make this change, this seems to me to be absolutely, clearly within the purview of the Committee on Style and Drafting. I suppose next we will be getting similar motions to change commas around. This is quite in the class with just exactly that. Or each time we decide to drop an "and" or change to a "but" or an "or," we will get a motion for that, and we will be here forever.

It seems to me that this kind of fiddling around, where there has, in fact, been no substantive change at all, is inexcusable at this late date in our attempt to meet the time limit requirement. The language is there, identical to

what we did adopt in first reading. No substantive change has been made. Style and Drafting did its duty quite within its mandate to change its location, but nothing more.

I think that on principle, if nothing else, this motion should be voted down and there should not be further such motions of that kind at this very late date in our proceedings.

MR. BALDWIN: I think, delegate Kameny, you have oversimplified the point. It's not like changing a comma. The Chair was told that what the committee did, in fact, do -- and if the Chair is in error or the group is in error, one of you should then identify that -- they are saying you did, in fact, create a section called "Definition."

Therefore, I'll ask the chairperson, when you received it, did you have a section on definition, whether it was 17 or what?

MR. BLOUNT: Mr. Chairman --

MR. BALDWIN: No. I just need -- oh, you can answer that because you were chairman of Judiciary.

MR. BLOUNT: Mr. Chairman, this is irrelevant.

MR. BALDWIN: No. We just need you to answer.

MR. BLOUNT: All we should do is just vote on the issue. I would like to move the previous question.

(The motion was duly seconded.)

MR. BALDWIN: No. We would like for you to answer the question so that they can, in fact, vote because some of them are saying they created a new section, Mr. Blount, and the delegates need to know. Either they did or they didn't.

MR. BLOUNT: Well, there was not a Section 17, "Definition," of course. But they have moved different information; there is no substantial change.

MR. BALDWIN: Thank you, delegate Blount. Delegate Cooper?

MR. COOPER: Yes. I don't think it's a matter of their creating a new section. It's well within the purview of Style and Drafting to create new sections and merge sections and delete sections and move the language elsewhere.

I think the question here is whether or not we want definitions to appear throughout the articles, at the end of articles, or in a separate document.

MR. BALDWIN: Delegate Simmons, delegate Bruning and Johnson.

MS. GRAHAM: May I say something?

MR. BALDWIN: Let's hear from those first.

MS. SIMMONS: I believe that it is appropriate to give guidance to the Style and Drafting Committee so that any

definitions will be consistently located. However, I think that the committee has heard the sense of the body, and I'm not sure that we need to take the time to engage in an act -- you know, a parliamentary motion.

I would move the previous motion, Mr. Chairman, if it's your decision that it needs to be definitized. If not, I would suggest that we move on.

MR. BALDWIN: The previous question has been called for.

MS. HARRIS: Do I get a chance to speak last?

MR. BALDWIN: Those in favor of terminating debate at this point, signify by saying yes.

(A chorus of "yeses.")

MR. BALDWIN: Debate has been terminated. We will now vote, and what's before you is to transfer Section 17, "Definition," to Section 10, subsection (2), line 10.

MR. COOPER: Section 4, subsection (2).

MR. BALDWIN: Section 4?

MS. GRAHAM: Yes.

MR. BALDWIN: Section 4, subsection (2), line 10. Those in favor, signify by a show of hands.

MR. COOPER: Twelve.

MR. BALDWIN: Those in opposition, likewise, a show

of hands.

MR. COOPER: Thirteen.

MR. BALDWIN: Abstentions, a show of hands.

MR. COOPER: Two.

MR. BALDWIN: Will you read the count, please?

MR. COOPER: Twelve in favor, thirteen not in favor, two abstaining.

MR. BALDWIN: The motion was rejected. Therefore, Section 17, "Definition," remains as is.

MS. GRAHAM: Mr. President, I move the adoption of Section 18, "Transitional Provisions."

MR. COOPER: We haven't voted on 17.

MR. BALDWIN: We need to adopt Section 17.

MS. GRAHAM: I'm sorry. I move the adoption of Section 17, "Definition."

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we adopt Section 17, "Definition." Those in favor, signify by saying yes.

(A chorus of "yeses.")

MR. BALDWIN: Those in opposition, nay.

(There was one "nay.")

MR. BALDWIN: Abstentions?

(No response.)

MR. BALDWIN: Section 17 has been adopted.

MS. GRAHAM: Mr. President, I move the adoption of Section 18, "Transitional Provisions."

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we adopt Section 18, "Transitional Provisions." Discussion?

(No response.)

MR. BALDWIN: Discussion? Delegate Simmons?

MS. SIMMONS: I move the previous motion, Mr. President.

MS. HARRIS: Question, please.

(The motion was duly seconded.)

MR. BALDWIN: The previous question has been called for. Those in favor of terminating debate, signify by saying yes.

(A chorus of "yeses.")

MS. HARRIS: Point of information.

MR. BALDWIN: Opposed, nay.

(No response.)

MS. HARRIS: Point of information, please.

MR. BALDWIN: Debate has been terminated. A point

of information has been called for. Delegate Harris?

MS. HARRIS: Yes. I'd like to ask delegate Graham from Style and Drafting, in this Section 18, "Transitional Provisions" -- as I looked throughout the Style and Drafting document, I did not see the original 3.13 dealing with the Judicial Nomination Commission.

MS. GRAHAM: Judicial Nomination Commission?

MR. BALDWIN: What is it you did not see?

MS. GRAHAM: Section 8, line 16; Section 7, line 8; it's page 4 of 13.

MR. BALDWIN: Does that answer your question, delegate Harris?

MS. HARRIS: That second part of it, the governor and board of governors.

MR. BLOUNT: What is the question, Mr. Chairman?

MR. BALDWIN: Will you repeat your question?

MS. HARRIS: My question is, under Section 18, it deals with the Judicial Nomination Commission and it deals with the terms, which are in 3.13 of the original draft, first paragraph, which talks about staggered terms. I do not see the second part of 3.13.

MS. GRAHAM: Turn, please, to page 13, lines 1 through 7, and it should be in that area.

MS. HARRIS: What?

MR. BALDWIN: On your last page.

MS. GRAHAM: On the last page, page 13, 1 through 7.

MS. HARRIS: Does it include the line in the second part of 3.13, "Each member shall be a citizen of the United States and a bonafide resident of the state at least five years prior to the appointment?"

MR. KAMENY: Page 4, lines 11 through 14.

MS. GRAHAM: Please turn to page 4, lines 11 through 14.

MS. HARRIS: Okay.

MR. BALDWIN: Does that satisfy you?

MS. HARRIS: Yes.

MS. GRAHAM: May I explain, Mr. President?

MR. BALDWIN: No. She said that satisfies her, and we will move on.

MS. GRAHAM: All right.

MR. BALDWIN: Mr. Secretary, is Section 18 on the floor?

MR. COOPER: Yes, it is.

MR. BALDWIN: It has been moved and properly seconded that we adopt Section 18. Discussion?

(No response.)

MR. BALDWIN: Is there discussion on Section 18?

(No response.)

MR. BALDWIN: Having heard none, those in favor of adopting Section 18, signify by saying yes.

(A chorus of "yeses.")

MR. BALDWIN: Those in opposition, nay.

(No response.)

MR. BALDWIN: Abstentions?

(No response.)

MR. BALDWIN: Section 18 has been adopted.

MS. GRAHAM: Mr. President, I'd like for us to go back to Section 14, "Financing." We have copies for everyone now.

MR. BALDWIN: Do each of you have your copy of the amendment that Chairman Blount has waived for consideration at this time?

(Pause.)

MS. HARRIS: Delegate Graham?

MS. GRAHAM: Yes?

MS. HARRIS: Can you shed some light on the reason why the committee decided to take the requirements for the Judicial Nomination Commission and place them under the section on transition?

MS. GRAHAM: Madam President, I would like for us to sit with 14, "Financing," if it's all right with President Baldwin. What we do is, when we discuss each section, we try to decide which is the best place we think, as a committee, that that should be placed, and then we place it there. And we have certain guidelines that we follow in doing that.

I would be happy if you would visit with us tomorrow at 1:00 when we meet, and we are going to work with Taxation and Finance, and assist us if you feel we need that.

MS. HARRIS: Well, maybe you could tell me what "transition" means in the judiciary article.

MR. BLOUNT: Mr. Chairman, point of order.

MR. BALDWIN: A point of order has been called for. Delegate Blount?

MR. BLOUNT: You have been very kind to allow one question and answer, but now we have a dialogue going.

MR. BALDWIN: Okay, the point of order is well taken. Delegate Graham?

MS. GRAHAM: You have in your hands copies of Section 14, "Financing." You have the new section that we passed to you, and I have here where we took part of it from Finance and Taxation, and we put the two together to come up with what we have here because we thought it would be better

here under judiciary.

MR. BALDWIN: Is it our understanding now that you would like this language to replace --

MS. GRAHAM: We would like for this language to replace what we have in Section 14, "Financing," on page 11 of 13.

MR. BALDWIN: Delegate Graham, put it in the form of a motion, please, so we can get it on the floor.

MS. GRAHAM: I move that we use the amendment that is given here to replace Section 14, "Financing," on page 11 of 13 in the article that you have received on the judiciary.

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we substitute the language that was passed out to you for the language that shows in the article on judiciary, the same section, 14. Are you ready for the discussion? Delegate Freeman?

MS. FREEMAN: Yes, Mr. Chair. I'd like to point out to the delegates that in the effort by the Style and Drafting Committee to create conformity between the finance and tax article and the judiciary article, the Committee on Style and Drafting made a choice, but there's a substantive difference between the two positions. And I think the delegates ought to

know --

MR. BALDWIN: Delegate Freeman, I'd like to correct you. This is the work of the Judiciary Committee. The chair has waived that, so when he waives, he's saying this may be added and, in fact, does adopt this language. So, it's not really only Style and Drafting.

MS. FREEMAN: Well, who did this?

MR. BALDWIN: That's what I was just saying. Once Mr. Blount raised and accepted that, then it became the property of that committee.

MS. FREEMAN: I see.

MR. BALDWIN: So, irrespective of where it originated, it is now the property of the Judiciary Committee. You may proceed.

MS. FREEMAN: Okay. Well, the two committees were in conflict is all I'm trying to say, and we adopted conflicting provisions. We adopted one provision in Judiciary and we adopted another in Finance and Tax, and the key difference is that the finance and tax article -- a budget submitted by the court system can be altered by the governor, whereas whosever this thing is -- I guess Judiciary's; it's consistent with what Judiciary did on first reading -- they require that the courts submit a budget and the governor

transmit it directly to the legislature. The governor can make recommended changes, but the governor cannot make changes in that budget.

I just think that the delegates ought to make a decision on that. In every other agency of government, including the school system, we have allowed the governor to make changes, and I think with good reason, because if you have a system, such as the courts, totally able to, in effect, determine its money, you have a real problem there. And the governor is the one who, after all, determines the overall budget.

Under this article, it is true that the legislature can change the budget, but the governor can't touch it. And I think that to be consistent with everything else that we've done all along, we ought to stick with the version that Finance and Tax did, and I'll point you to, if anybody has it around, the report that Finance and Tax did on the state courts' budget.

It says the executive is not bound by the budget estimates submitted by the court system. So, we do have a conflict here.

MS. GRAHAM: Mr. Chair?

MR. BALDWIN: Okay. The only thing the Chair would

entertain is a response to her observation. Let's repeat it to make sure you respond. Number one, she's saying there is a direct conflict, and if that's true, please share it with us.

MS. GRAHAM: Right now, Mr. Chair, I do not see that. In the old one it says, "The governor shall transmit the proposed budget to the legislature without changing it." In the new one it says the very same thing, so I can't see where there --

MR. ROTHSCHILD: It conflicts with Finance and Tax.

MR. SCHIRAG: Read the next sentence.

MS. GRAHAM: Oh, I'm sorry. The next sentence says, "The governor shall not be required to propose revenues to fund the entire submission, but must propose revenues to finance that portion of the proposed budget recommended for acceptance by the legislature." I don't see where there is a conflict, Mr. President, and we discussed this fully.

MR. BALDWIN: We don't want a debate between you and delegate Freeman. I will ask two other members, and only two other members, of the committee to react so that it will give the body a feel for where you are.

Delegate Love?

MR. LOVE: I'll just echo what delegate Freeman has

said. In reality, there were two different --

MR. BALDWIN: I'm sorry. I missed your first phrase.

MR. LOVE: I was just going to reiterate what delegate Freeman said. In reality, there were two different ways this budget was handled. Finance and Tax suggested that the governor could make changes; the present Judiciary said the governor could not make changes. What is before you is consistent with what the Judiciary says, saying the governor cannot make changes.

It's a small point, and I think we could vote very quickly one way or the other. Besides that, these things are consistent and, you know, I think we should just make a choice and move on.

MR. BALDWIN: Thank you. Delegate Schrag, are you going to say there's no inconsistency? If so, we'll move on.

MR. SCHRAG: I think there is no inconsistency because the court's budget must be shown to the legislature, unchanged. But the Style and Drafting proposal says explicitly that the governor is not required to fund the entire submission. So, he may make changes in the proposal for actual legislation. The committee saw these as consistent, not inconsistent, and just combined the two.

MR. BALDWIN: Delegate Simmons?

MS. SIMMONS: In the executive branch report, we said that the legislature and the judiciary would not be modified by the governor. As a matter of fact, if this is changed, then in Style and Drafting we need to be sure that the Executive is made consistent with whatever the body determines here.

MR. BALDWIN: Delegate Rothschild?

MR. ROTHSCHILD: Yes. I wish it would be further clarified. I wish the maker of the motion or somebody supporting this would actually explain the difference between what is here and what is currently in what has come from Style and Drafting. I don't understand it. I can't see the difference.

MR. BALDWIN: Would the committee like to respond prior to voting? Delegate Harry Thomas?

MR. THOMAS: Mr. President, it seems to me if Mr. Blount is making this proposal, then it seems to me Mr. Blount should explain it to us.

MR. BLOUNT: May I respond?

MR. BALDWIN: Yes, you may.

MR. BLOUNT: The fact is I agree with what was already said, that there are no differences. The only difference is the one that he was talking about with Finance

and Tax.

MR. THOMAS: I don't want you to repeat what has already been said. I want to give us your explanation for what we're getting ready to vote on.

MR. BLOUNT: I'm not going to carry on a dialogue. I stand by what I just said.

MR. BALDWIN: Okay. Delegate Cooper?

MR. COOPER: Yes. The issue is, you know, whether there's a conflict between substantive committee reports. When we adopted the language on budget veto authority in the report of Finance and Taxation, this same issue came up. So, the report on Finance and Taxation was amended; it was amended to read that, "The executive shall be empowered with line-item veto authority on the budget unless otherwise provided in this constitution."

So, it is therefore otherwise provided in this article, and that's how we took care of the conflict when it came up on the floor then.

MR. BALDWIN: We have had adequate numbers that have spoken to both the pros and cons. Delegate Talmadge Moore?

MR. T. MOORE: Yes, sir, Mr. President. I think if we're going to have it in Finance and Tax and in the Executive, all the sections should be in agreement. We shouldn't look in

one section where the governor has this power, and look in the next section and have another power. It should be consistent. I don't care what you do or how you get it together, but it should be consistent.

MR. BALDWIN: Your point is very well taken. We will vote at this point, and this amendment will require a two-thirds vote of those present and voting. Those in favor of the amendment, signify by a show of hands.

MR. SCHRAG: Point of order, Mr. President.

MR. BALDWIN: Yes?

MR. SCHRAG: The rules say that a resolution by the Style and Drafting Committee only requires a majority.

MR. BALDWIN: It says if it's consistent.

MR. KAMENY: Yes.

MR. BALDWIN: This is not --

MR. KAMENY: Yes, it is.

MR. BALDWIN: Now, let's get it straight; let's read the rules. We will not have everybody interpreting the rules. The rules say that if and when a chairperson -- and that was Mr. Blount; Mr. Blount waived this. The delegation then will insist on a two-thirds vote in order to adopt this for the amendment.

MR. KAMENY: Point of order.

MR. BALDWIN: Now, we're dealing strictly with the amendment.

MR. KAMENY: Point of order. The purpose of the amendment is to correct an inconsistency, and that requires a simple majority vote.

MR. BALDWIN: Just one second. The Chair does not need everyone to interpret the rules. I will read to you. "On second readings" -- and listen very carefully, Committee on Style and Drafting -- "on second readings, an amendment shall be in order only if" -- and it has (a) and (b). Now, are you with that? What does "only if" mean?

MR. SCHRAG: It's the previous section, Mr. President, (d) (1).

MR. KAMENY: (d) (1).

MR. BALDWIN: We do not -- at least I don't consider this an inconsistency, because you're replacing the whole thing.

MS. HARRIS: That's right.

MR. BALDWIN: So, we'll leave it up to the body. We'll leave it up to the body.

MR. KAMENY: It is to correct an inconsistency with Taxation.

MR. BALDWIN: Okay. We will determine this as an

inconsistency and it will be a simple majority. Those in favor of adopting this amendment, signify by a show of hands -- those in favor.

MR. COOPER: Twenty-one.

MR. BALDWIN: Those in opposition?

MR. COOPER: Four.

MR. BALDWIN: Abstentions?

MR. COOPER: There are none.

MS. HARRIS: Here's one down here.

MR. COOPER: One.

MR. BALDWIN: The amendment was adopted. Now, the chairperson may --

MR. LOVE: Mr. Chair, could I have a point of clarification?

MR. BALDWIN: Yes.

MR. LOVE: At this point, that means there will be nothing in the finance and tax section about courts, is that correct?

MR. KAMENY: That's up to us.

MR. COOPER: It's still in there.

MS. GRAHAM: It's still in there; it can be.

MR. BALDWIN: It's still in there.

MS. GRAHAM: Mr. President, I move the adoption of

the second reading of the judiciary reports, with the amendments.

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we adopt the article on judiciary, as amended, on second reading. Those in favor, signify by saying yes.

(A chorus of "yeses.")

MR. BALDWIN: Those in opposition, nay.

(There were three "nays.")

MR. BALDWIN: Abstentions?

MR. BARNES: Abstain.

MR. BALDWIN: The second reading on judiciary has been adopted. The Chair would like to point out and thank those of you for keeping us within our time limits. We were going to 6:30, but we have completed the work by 6:25.

At this point, we will now move into first reading of the bill of rights. We'll ask that committee to come forward, please. Once they are in their seats, we will clarify some instructions as to how debate will continue on the first reading on bill of rights.

(Pause.)

MR. BALDWIN: The Chair will ask the delegates to please be seated.

Delegate Jerry Moore, delegate at-large and chairman of Bill of Rights, you may present your article on first reading.

MR. J. MOORE: Mr. President and delegates, I present the first section in the article on rights. Section 1, "Freedom of Religion. The State shall establish no religion nor interfere with the free exercise thereof. No person shall be denied any right or privilege because of his or her religious beliefs or the exercise thereof."

Mr. President, I move the adoption of Section 1.

(The motion was duly seconded.)

MR. BALDWIN: Delegate Moore, in the future we do not have to read, because it has been read once. All you move is the adoption.

MR. J. MOORE: Thank you, sir.

MR. BALDWIN: It has been moved and properly seconded that we adopt Section 1. Mr. Chairman, is there a minority report?

MR. J. MOORE: Mr. President, there is a minority report.

MR. BALDWIN: May we hear from the author of the minority report?

MR. MARCUS: We're not raising this.

MR. J. MOORE: It's not a minority report?

MR. MARCUS: No.

MR. J. MOORE: Mr. Chair?

MR. BALDWIN: Yes?

MR. J. MOORE: I am advised that there is not a minority report from the committee.

MR. BALDWIN: For Section 1?

MR. J. MOORE: Correct.

MR. BALDWIN: We do have an amendment, the Oulahan amendment, for Section 1. Delegate Oulahan?

MR. OULAHAN: Mr. President, I move that Section 1 be stricken and the following be inserted from the First Amendment to the Constitution of the United States: "The legislature shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

The rest of the provisions of Section 1 from the Constitution are included here, but I will not read them because they do not relate to religion.

(The motion was duly seconded.)

MR. OULAHAN: Mr. Chair, I'll be brief.

MR. BALDWIN: No, sir. We do not need the reading of the report. This body has agreed that once we move into debate, we'll only debate and not read the report. The

committee -- from 4:25 to 5:27, there strictly were reports, questions and answers, and that type. So, it's a matter of time. We did agree on May 11th that when a minority report comes up or an amendment -- since you've circulated yours in advance and you've done what was required, the delegates do, in fact, have it in front of them.

You have moved a substitute motion to replace Section 1. What is left now is debate. Yours was seconded.

MR. OULAHAN: May I close debate on this?

MR. BALDWIN: Yes, you may.

MR. OULAHAN: Thank you.

MR. BALDWIN: It has been moved and properly seconded that we substitute Oulahan's section 1 for the committee's report. Discussion?

MR. KAMENY: May I rise to speak?

MR. BALDWIN: No, sir. We would prefer some other discussion. Maybe we need to go over the rules again. The committee, which is the Bill of Rights, will be allowed to have one person respond, and if the person isn't clear, then another person. So, if you respond right now, it doesn't allow any further response, unless you waive your right to speak further. I would think you'd probably want to respond a little later on, but it's up to you, delegate Kameny.

MR. KAMENY: Very well. We do wish to respond to delegate Oulahan's motion.

MR. BALDWIN: Oh, sure. Are there other delegates who wish to respond? Delegate Long?

MR. LONG: Mr. President, we have before us a bill of rights. I think many people might call it "a bill of lefts." I would prefer that it be a bill of the center. What is proposed here is essentially the First Amendment to the Constitution of the United States. It has served quite well to cover these kinds of problems. Court decisions have been based on it and I think have upheld the intent of the liberal community.

The new wording apparently yields some problems. Therefore, I support the First Amendment of the U.S. Constitution as a substitute.

MR. BALDWIN: Are there other comments on the Oulahan amendment?

(No response.)

MR. BALDWIN: Are there other comments to the Oulahan amendment?

(No response.)

MR. BALDWIN: At this point, we'll ask the committee to respond.

MR. KAMENY: I turn to Mr. Oulahan, and also to delegate Long's comments because he was not here, I believe, during the discussion period when I pointed out -- I'm speaking generally, first in deference to delegate Long, and then a little more specifically in deference to delegate Oulahan -- that, first, the basic principle, delegate Long -- delegate Long, you are being spoken to. I'd ask the courtesy of your attention, please, when a comment is being directed at your question.

I pointed out that the basic principle which guided us here, and it is well accepted, is that we cannot retreat from rights granted to citizens by the federal Constitution, but we certainly have the right to extend those farther than the federal Constitution goes, and many states have.

Now, the First Amendment provisions -- and our Section 1 deals with only one provision of the First Amendment -- have been the subject, as might be expected in 200 years of change, of torrents of litigation. The Bill of Rights was a fine effort for 1790. I suspect that if the Founding Fathers were writing it today, they would make many of the same changes that we are making because of circumstances that they could not possibly have foreseen then, and that is what we are trying to do here throughout.

Now, more specifically to both you and delegate Oulahan, the first sentence of our Section 1 quotes identically, except for the change to the word "State" from "Congress," from the First Amendment. "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." We changed it to "interfere."

The second expands upon that in an effort to get at discrimination against citizens, legal discrimination, because of their practice and choice of religion. It says, "No person shall be denied any right or privilege because of his or her religious beliefs or the exercise thereof," which is certainly consistent with everything that I believe and that all of us believe that this country stands for at present in this context of religious freedom.

It seems to the committee -- and we discussed this section and its formulation at very great length. There were those of us who wanted to put in other sections and other clauses and others of us who did not, until we arrived at this. This seems eminently sound and beyond any reasonable possibility of exception, except for those who would like us to have nothing more in our article on rights than a carbon copy of the Bill of Rights of the United States Constitution. It was the belief of the committee that we should go farther than

that.

MR. BALDWIN: Delegate Kameny, you took two minutes and ten seconds; you exceeded your two minutes.

We have heard from the committee. The committee has responded to delegates. At this point, the motion, if, by consensus -- we can do it either by consensus or a motion to terminate debate, since there was no other discussion.

Shall we, by consensus, terminate debate?

MR. J. MOORE: Yes, by consensus, please.

MR. BALDWIN: Those in favor of the Oulahan amendment, signify by a show of hands.

MR. COOPER: Six.

MR. BALDWIN: Those in opposition, likewise.

MR. COOPER: Twenty-five.

MR. BALDWIN: Abstentions?

MR. COOPER: Two.

MR. BALDWIN: The Oulahan amendment to Section 1 has been rejected. Delegate Schrag?

MR. SCHRAG: I'd like to ask the committee about the phrase "or the exercise thereof" at the end of line 5. As I'm sure the committee knows, there have been a number of cases involving particular sects that have practices, such as handling of poisonous snakes and other kinds of particular

acts that are not merely worship.

I was wondering whether the phrase "or the exercise thereof" was intended to protect whatever acts an individual or group wants to engage in under the name of religion, or whether the phrase "or the exercise thereof" is intended to be limited to worship.

MR. BALDWIN: One person, please, from the committee.

MR. KAMENY: The committee's report addresses that, in part, and says, "The free exercise clause prohibits entirely state regulation of religious beliefs and permits only minimal regulation of religious practices respecting observances in public places and public fund-raising."

It was our belief or our feeling -- or the consensus of the committee; I will express it more formally -- that if someone wants to handle snakes, let them handle snakes. Why should the state want to tell them they may not handle snakes?

MR. BALDWIN: Thank you. We will now vote. Those in favor of adopting the amended Section 1 of the bill of rights, signify by a show of hands.

MR. COOPER: Twenty-six.

MR. BALDWIN: Those in opposition?

MR. ROTHSCHILD: Mr. Chairman?

MR. BALDWIN: You do not interrupt the Chair when we

are in a count, please.

Those in opposition?

MR. COOPER: One.

MR. BALDWIN: Abstentions?

MR. COOPER: Four.

MR. BALDWIN: Yes, delegate Rothschild? State your point of order, please.

MR. ROTHSCCHILD: I have a minority report on this section and I was waiting to be called on. I spoke to the chairperson of the committee and I was not called on for my minority report.

MR. BALDWIN: You were sitting there when the Chair asked twice for a minority report.

MR. ROTHSCCHILD: But not at the beginning.

MR. BALDWIN: Just a second, sir. I looked down at you. The Chair turned and looked in your direction and said, "Mr. President, there is no minority report." You did not look up. I repeated it twice. Therefore, we will move on.

MR. ROTHSCCHILD: On the first section? There was no call for a minority report.

MR. BALDWIN: Yes, he called for it, plus the President. The Chair called also.

MR. COOPER: For clarification, the chair said --

MR. BALDWIN: That's what I said.

MR. COOPER: He said there was a minority report.

MR. J. MOORE: Mr. President?

MR. BALDWIN: Mr. Moore, so that all of us will be fair, the secretary is saying that you did not say there was no minority report. I just want to know from you. I heard you say there was no minority report.

MR. J. MOORE: Mr. Chair, I read what was attached to the report in the discussion period as a minority report.

MR. BALDWIN: Yes.

MR. J. MOORE: And then I stated here that there was a minority report when I moved the proposition.

MR. BALDWIN: I'm sorry. The Chair heard you saying there was no minority report. Mr. Rothschild, you may present your minority report, and the Chair apologizes.

MR. ROTHSCCHILD: Okay, thank you.

MR. BALDWIN: While delegate Rothschild is coming forward with his minority report, in the past we have had minority reports that came before us and were defeated, and delegates did, in fact, when we came to the adoption of the article, try and attempt to have some discussion on that same report. We know that is contrary to Roberts Rules of Order, and we will not allow, in the future, a minority report that

was defeated to be brought back on the floor.

Delegate Rothschild, you may proceed.

MR. ROTHSCHILD: Thank you, Mr. President. I wish to amend Section 1, "Freedom of Religion." After the first sentence, I would include the following sentences: "The state shall not, nor shall any agent of the state acting in official capacity, promote religion. Public expression of religious beliefs at state functions and tax exemptions of religious institutions are not prohibited."

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we substitute the minority report for the committee's Section 1.

MR. KAMENY: No.

MR. ROTHSCHILD: I would like to discuss that.

MR. KAMENY: It's not a substitute.

MR. ROTHSCHILD: The reason to include that language, basically, is the following. I think to be consistent with our preamble -- in our preamble, we made a very specific determination, and our committee discussed this thoroughly, that we wanted to be clear about the separation between religion and the state.

For that reason, we have no reference to God in our

preamble. Now, I think to be consistent with that and to be consistent with separation of church and state, I don't think we would want public officials giving prayers at official gatherings; I mean official gatherings where they are in a legislative capacity or where they are in their elected capacity. If they were a reverend or they had some other capacity and it was in a different setting, then they obviously would be permitted to make such prayers.

But in an official capacity, in a political way, I don't think we want politicians speaking for our religious beliefs. In the same extent, I don't think we want public monies going towards hiring of chaplains and professional religious people.

Now, in the amendment that I'm proposing, I am very specific in the fact that I do not prohibit, or the amendment does not prohibit religious prayers being given at public openings. In other words, if it were to come from the body, from the people -- if the religious spirit comes from the people, that's different than it coming from political leaders in a political position.

Also, to be consistent with other aspects of our constitution, I make it clear that religions can be considered to get tax exemptions. So, I am basically doing this not as

anti-religion, but so that there's a clear distinction between religion and the state, and I think it's well within keeping with the establishment of this country and I think it's well within keeping with the way in which we handle this in the preamble. Thank you.

MR. BALDWIN: Discussion on the Rothschild minority report?

(No response.)

MR. BALDWIN: Is there discussion on the Rothschild minority report?

(No response.)

MR. BALDWIN: We'd like one member from the committee to respond, please.

MR. J. MOORE: Mr. Chairman, I will speak to the amendment. First, I must ask the delegates to vote in opposition to the amendment to the proposed work of the committee. The committee has done a very sound job and has reported out -- the vote that you expressed a few moments ago is certainly indicative of your belief in the work that the committee has done.

I think that I'm highly qualified in this area, and I know precisely, as the chairman of this committee, the sense of people with respect to this particular issue, and that is

why it is set forth in this particular manner. I ask you to vote against the amendment that has been proposed here today.

MR. BALDWIN: By consensus, are we ready to vote? Are we ready to terminate debate on the Rothschild report?

MR. T. MOORE: Point of information. I wanted to ask the maker of the motion a question. Am I out of order?

MR. BALDWIN: Yes, you may ask a question.

MR. T. MOORE: Okay. Mr. Rothschild, were you saying, in essence, that religious institutions -- prayers, et cetera -- would be exempted or would not be exempted from tax? I didn't quite get that. What did you really say on that?

MR. ROTHSCHILD: Okay. What I was saying in the amendment I was making -- the sense of the amendment says public expression of religious beliefs at state functions and tax exemptions for religious institutions are not prohibited, meaning that that line I included does not prohibit tax exemptions for religious organizations. It merely means that somebody who is in a political position does not open each legislative session with a prayer.

There are many different religions, and I think all the religions should have equal access, and somebody should not have the advantage of being in an elected position to be speaking prayers and to be speaking for those particular

religions.

Also, say we were at a legislative session and somebody from the audience thinks that it's appropriate to speak about religion or open with a prayer. It can come from the people. I just don't want the religion coming from the top down in a political way. I want it coming more from the people, so there's more recognition of the diversity of religions. Thank you.

MR. BALDWIN: Delegate Coates?

MR. COATES: Mr. President, we have already considered and disposed of the matter regarding exemption for religious agencies.

MR. BALDWIN: Your point is well taken. Delegate Simmons?

MS. SIMMONS: I move the previous question, Mr. President.

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we terminate debate. Those in favor, signify by saying yes.

(A chorus of "yeses.")

MR. BALDWIN: Those in opposition, nay.

(No response.)

MR. BALDWIN: Abstentions?

(No response.)

MR. BALDWIN: Debate has been terminated. Those in favor of the Rothschild minority report, signify by saying yes.

(There were four "yeses.")

MR. BALDWIN: Let's see a show of hands, please. Those in favor of the Rothschild substitute amendment?

MR. COOPER: Four.

MR. BALDWIN: Those in opposition, likewise.

MR. COOPER: Twenty-five.

MR. BALDWIN: Abstentions?

MR. COOPER: One.

MR. BALDWIN: The Rothschild minority report was rejected. Mr. Chairman, a motion to adopt Section 1 is in order at this time.

MR. J. MOORE: Mr. President, I move Section 1, "Freedom of Religion."

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we adopt Section 1. Those in favor, signify by saying yes.

(A chorus of "yeses.")

MR. BALDWIN: Those in opposition, likewise.

(There was one "nay.")

MR. BALDWIN: Abstentions?

(Two hands were raised.)

MR. BALDWIN: Section 1 has been adopted. Mr. Chairman, Section 2.

MR. J. MOORE: Mr. Chairman and delegates, I move Section 2, "Freedom of Association, Assembly, Expression and Petition."

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we adopt Section 2. We do have the Oulahan amendment. Delegate Oulahan, am I right in saying you have a substitute for each section?

MR. OULAHAN: Mr. Chairman, I do not have a substitute in the case of Section 2. I have moved that Section 2 be deleted because the First Amendment to the Constitution which I proposed earlier would cover it. I will reserve my right to speak at the close of debate.

MR. BALDWIN: Delegate Love?

MR. LOVE: Mr. Chair, I'd like to move to delete the second paragraph in this section, beginning with the words "Freedom of the press," and would like to reserve the right to speak until the end of debate.

(The motion was duly seconded.)

MR. BALDWIN: It has been moved and properly seconded that we delete the words, "Freedom of the press" -- delegate Love?

MR. LOVE: The whole second paragraph, beginning with "Freedom of the press," lines 12, 13 and 14.

MR. BALDWIN: The Love amendment deals with lines 12 through 14?

MR. LOVE: Yes. "Freedom of the press includes the right of the press to be free from searches, seizures, or compulsory testimony to discover the identity of confidential sources or information provided by such sources."

MR. BALDWIN: Discussion on the Love deletion? Delegate Oulahan?

MR. OULAHAN: Mr. President, I want to point out to my fellow delegates here that if this section were adopted as proposed by the committee, at some time you may be convicted or not acquitted because a newspaper man knows the facts about a case and neither the prosecutor nor your lawyer can go to that newspaper and get the facts. Those sorts of things have happened.

The press privilege which is granted here has no limitations on it whatsoever. I, as a lawyer, when I have a

client, my privilege isn't absolute. If my client is involved in a crime, there is no privilege between me and my client, but that privilege is granted here to the press. There are no restrictions upon the press in this, and I urge you to adopt Mr. Love's amendment.

MR. BALDWIN: Delegate Brian Moore and delegate Simmons.

MR. B. MOORE: Just a point of inquiry. Mr. Oulahan, haven't courts already short down appeals to the courts just based on that notion?

MR. OULAHAN: Mr. Chairman, I'm not a great authority, but my knowledge is this. Where the privilege has been granted by statutes in states, it has been subjected to limitations along the lines of preventing miscarriage of justice. Where the privilege has been claimed in the absence of a statute, the courts have initially allowed some withholding of information, but if it is essentially necessary for justice, the courts will require it.

MR. MARCUS: Point of order.

MR. OULAHAN: The problem with this one is --

MR. MARCUS: Point of order.

MR. BALDWIN: Delegate Marcus, state your point of order.

MR. MARCUS: Mr. President, isn't it highly unusual for one delegate to answer a question from another delegate on the floor if that delegate answering the question is not the maker of the motion?

MR. BALDWIN: No, it wasn't out of order. Delegate Simmons?

MS. SIMMONS: My inquiry is through the Chair to delegate Oulahan as well. I want to know how his comments relate to the Sawyer case.

MR. OULAHAN: I can't respond.

MR. BALDWIN: He can't respond, delegate Simmons.

MS. SIMMONS: Okay.

MR. OULAHAN: I'm not a member of the committee.

MS. SIMMONS: No, no. Your comments would reflect that you have some in-depth knowledge with regard to this advantage. My point is that there are federal statutes, I believe, that do make it possible for press to have information which they can give, and that that information does become available. I just thought maybe you were giving us some additional information as a lawyer and based on cases and experience that we ought to have, maybe, at our disposal.

MR. OULAHAN: I don't know of any federal statute that limits the press, except to the extent where you have

security information; the press can't have it. However, the New York Times case, which is mis-cited in the report of the committee here -- the Supreme Court said that the government had heavy burden of proceeding civilly against a newspaper where the newspaper had security information in its hands. In that case, the government did meet the burden. So, therefore, the press was not going to be chastised for getting the information. That was not a statute.

MR. BALDWIN: The Chair will entertain a response from the committee. Delegate Kameny, your response to the Love amendment?

MR. KAMENY: Yes. Our section that Mr. Love chooses to try to delete was put in in response to a relatively recent Supreme Court decision. I point out again that it is within our power, if we choose, in guaranteeing rights, to go beyond the federal level on these matters. So, there is no procedural question with our maintaining this if we wish.

Now, what the Supreme Court decision does, the impact of which we are trying to minimize, is to severely chill the whole process of investigative reporting. At best, if you want to put it in terms of a balance, we gain, all of us, far more by a press which is free to investigate and free to gather information and free to publish it, than we do by a

press that is inhibited from doing it, and the sources of which information are inhibited because they will not talk to the press if the press is compelled to testify. This was an attempt to address that.

Now, the information at issue -- if prosecutors wish it or others, the government can attempt to get it by other channels. But as we state here in our report, the committee firmly believes that the uninhibited flow of news and information, which means the uninhibited acquisition of the news and information which is then to flow to the public, is critical to a free society, and therefore rejects the Supreme Court view.

That flow will cease if those providing the information know that the reporter can be compelled to reveal their identities and unleash the entire force of the state against them.

We believe that this section is a worthy one and one which you should support.

MR. BALDWIN: Time, delegate Kameny.

MR. KAMENY: And the Love amendment would severely hamper the exercise of the press, which is so important to all of us.

MR. BALDWIN: Delegates Long, Garner, Coates and

Talmadge Moore.

MR. LONG: Mr. President, as a civil libertarian, I couldn't agree more with Mr. Kameny. However, is it necessary that the Rights Committee meet head-on everything in controversy now in constitutional law?

A reasonable strategy for trying to pass this constitution is not to fight every battle here in the District of Columbia. There is another day, and if we gain control over our own laws, we have a better chance of writing those laws in the correct way in the future.

If we put everything in there, we put the whole project in jeopardy. I believe it's a short-sighted approach to try to win every battle in this little constitution for the long run if they are going to lose now and never get a chance to come back again.

MR. BALDWIN: Delegates Garner and Coates, then Talmadge Moore.

MR. GARNER: As a strong civil libertarian, I must oppose the committee's language.

(Laughter.)

MR. GARNER: My friend and neighbor and fellow delegate, Dr. Kameny, keeps talking about a theory that he's not going to take any rights away that the Supreme Court has

provided, but he's going to provide new ones. Well, it's very nice of him to provide these rights to the press, but at the same time he's taking away from me and you and everybody else the right to compel testimony in a case.

Now, he is taking away rights from us and giving them to other institutions, and I oppose it.

MR. BALDWIN: Delegates Coates and Talmadge Moore.

MR. COATES: Mr. President, I don't know what a civil libertarian is, so I don't know that I should refer to myself as such.

(Laughter.)

MR. COATES: I don't even know what freedom of the press is.

MS. SIMMONS: That's right; we've never experienced any.

MR. COATES: I think the press has opted to be less than free. It has taken the position of representing parochial interests. We've seen that documented in its comments with respect to the work of this convention.

MS. SIMMONS: Right on.

MR. COATES: What troubles me, however, sir, is that I have not heard from the committee an answer to delegate Oulahan's statement that if we adopt the second sentence in

Section 2, it would permit my being convicted because some evidence that a reporter had could not be compelled for presentation at my trial. I have not heard that question answered, and for the exercise of my determination with respect to the motion to delete, I would hope, and prayerfully hope, that the committee would answer that specific question.

MR. BALDWIN: At this time, delegate Mason, will you designate someone from your committee to answer the question?

MR. MASON: Delegate Marcus will answer the question.

MR. MARCUS: I would like to speak to a couple of things that delegate Oulahan --

MS. SIMMONS: Just answer the question.

MR. BALDWIN: Sir, we prefer that you answer this specific question.

MR. MARCUS: I am answering the question.

MR. BALDWIN: Pardon?

MR. MARCUS: I am answering the question.

MR. BALDWIN: Okay.

MR. MARCUS: It's very interesting. The committee had a long discussion regarding this particular area. I'm afraid that Mr. Oulahan has over-extended himself as an attorney in the room in making some advice to the convention. I have been waiting for the counsel to arrive and he has not

yet, and I'd love to ask him this question myself.

Mr. Oulahan provided an analogy for the convention that, in fact, somehow this particular paragraph would provide for greater protection for the press than it does for, in fact, attorneys. That is simply not so. In fact, any communication that is made to an attorney that is intended to be confidential is, in fact, protected.

Mr. Oulahan insists on passing this particular paragraph as being one which somehow protects the press and its ability to indict people to withhold crucial information which the press would somehow frivolously toss away. That's simply not so either.

What this paragraph does is that it protects the flow of information among people in this particular society. It doesn't give the press any more protection than they need to continue to have a free society.

Imagine if you will -- and this is the thinking of the committee in considering this -- Mr. Love, I will answer this question if you will hold on for a second.

MR. BALDWIN: You have 30 seconds to respond.

MR. MARCUS: Imagine if you will a society in which the press is not allowed to report the information which is available to them. The police and all the resources in the

state can be turned to collect information. The police and all the resources in the state have available to them the information which the press prints to help track down the information necessary for a conviction in a particular case.

I think that Mr. Oulahan raises a straw horse when, in fact, he points out that somehow information might be denied to the court which could help convict someone if, in fact, we insist that reporters are protected in their particular confidential sources. Thank you.

MR. BALDWIN: Delegate Talmadge Moore.

MR. T. MOORE: This is a point of inquiry again, and I just would like to know what other state constitutions have this extensive and complete freedom of the press in this manner. I just want to know how many other states have in the constitution this extensive and complete freedom of the press, without any question -- none whatsoever.

MR. KAMENY: I point out, in response, that this section, as has been indicated both in our report and in our discussions so far, addresses a 1972 United States Supreme Court decision. To my knowledge, no state constitutions have been written since 1972. I suspect that future constitutions may well do what we are doing, but to my knowledge we are the first, because we are the first constitution written since

that time.

It's the first time the issue ever came up, because prior to that the press thought they had the right.

MR. T. MOORE: So, no other constitutions then --

MR. KAMENY: No, no other constitution that we know of has this second paragraph.

MR. BALDWIN: Delegate Lockridge?

MS. LOCKRIDGE: Fellow delegates, I stand to support the Love amendment for personal reasons that concern my community. I see written in here that you have given all freedoms to the press, but what freedoms have you given to communities where confidential, erroneous information has been withheld that has tended to tarnish families and communities, and stories have turned out to become hoaxes?

For those reasons, I ask you to please support the Love amendment so that we can eliminate this freedom of the press that tends to turn into sensationalism.

MR. BALDWIN: Delegate Schrag?

MR. SCHRAG: I would like to offer a substitute to the Love amendment, which would read the same as the committee amendment except --

MR. BALDWIN: As you understand, a substitute, if that is the correct terminology, is not in order as long as

there is an amendment on the floor. You may at this point offer a secondary amendment.

MR. SCHRAG: I offer an amendment to the Love amendment to restore the committee's language with the following exceptions: insert "or" between "searches" and "seizures," and delete the words "or compulsory testimony."

MS. EICHHORN: Could you repeat that, please?

MR. SCHRAG: Insert the word "or" between "searches" and "seizures," and delete the words "or compulsory testimony."

MR. BALDWIN: Mr. Secretary, do you have the secondary amendment?

MR. COOPER: Yes.

(The motion was duly seconded.)

MS. SIMMONS: Is there a period after "seizures?"

MR. SCHRAG: No, no. The way it would read then is, "Freedom of the press includes the right of the press to be free from searches or seizures to discover the identity of confidential sources or information provided by such sources."

This amendment would be a compromise between the committee's view and Mr. Love's view, in that it would protect the public from what delegate Oulahan is concerned about -- information that is in the possession of the press that would be of relevance to individual cases, individual litigation or

criminal proceedings. Where a person needed information and the press had it, the person would still be able to seek it through compulsory testimony and a judge would decide whether he was entitled to it.

But searches and seizures -- that's something that we citizens don't do. That's something that the government does. Searches and seizures of newsrooms would still be prohibited under the section. So, this would be a halfway measure that would accomplish some of the committee's objectives, but would not prevent us citizens from being able to seek information through judicial means that the press had.

MR. BALDWIN: The Chair notes that it was not officially placed on the floor before delegate Schrag continued to talk.

MR. SCHRAG: Delegate Mason seconded.

MR. BALDWIN: I know, but it hasn't been placed on the floor. I know it was seconded; it has been moved and properly seconded. So, he has, in fact, spoken to it now, and are there other comments to the Schrag amendment?

MR. LOVE: Point of order, Mr. Chair.

MR. BALDWIN: Yes, sir, state your point of order.

MR. LOVE: It would seem that this is a motion that totally contradicts my motion to delete, and I wonder if it's

in order. It would appear to me it's more in order to vote on my amendment to delete, and then to work on the language of this.

MR. BALDWIN: If this were to delete, in toto, the substance of your amendment, it is not in order and it would be a substitute motion. The delegate informed me that he was only substituting a few words that really wouldn't change it.

Delegate Schrag, do you see that as actually changing this?

MR. COOPER: He's changing it.

MS. HARRIS: Yes, he's changing it.

MR. SCHRAG: The parliamentary procedure, Mr. President, is that if we adopt delegate Love's amendment to strike, then the section would still be up. So, we could move my amendment at that point. I'll hold it until then.

MR. BALDWIN: Your point, Mr. Love, is well taken.

MS. HARRIS: I move the previous question.

MR. BALDWIN: The previous question has been called for, but I still see hands. The committee has spoken. Those in favor of terminating debate, signify by saying yes.

(A chorus of "yeses.")

MR. BALDWIN: Those opposed, nay.

(There was one "nay.")

MR. BALDWIN: Abstentions?

(No response.)

MR. BALDWIN: We have terminated debate on the Love amendment. Delegate Love?

MR. LOVE: I reserved the right to speak last.

MR. BALDWIN: Yes, you did.

MR. LOVE: Fellow delegates, a little over a year ago, an article appeared in a major newspaper in this city claiming that this city was full of child addicts; that they had spoken directly to a ten-year-old child who was --

MS. LOCKRIDGE: Eight.

MR. LOVE: Eight-year-old, who was being shot up by its mothers and junkies who lived around. At the time, the Mayor of this city said, "No way." At the time, the police chief of this city said, "No way." The city then spent thousands of dollars trying to track this person down.

Meanwhile, this newspaper claimed they had confidentiality; that they did not have to report the name of this eight-year-old child addict. This series of articles made history. The writer of this series of articles was about to be awarded the most prestigious award that you can get in this country for newspaper reports.

It was only at that point in time that it was finally

discovered that the writer had lied -- totally lied. There was no way under the present laws of freedom of speech that this information could have been gotten from this newspaper.

What is being proposed here is to allow that kind of arrogance to continue and, in addition, to make it even more difficult to find out when this paper is lying. I urge you to defeat this. It is clear that the protections of the freedom of press under the federal Constitution and also under the first sentence in this section are perfectly adequate, and that we do not need to give newspapers any more power than they already have. Thank you.

(Applause.)

MR. BALDWIN: As you know, debate has been terminated. He was allowed the last chance and we have given that to him. The only thing in order now is to vote on the Love amendment.

MS. SIMMONS: Previous question.

(The motion was duly seconded.)

MR. BALDWIN: Those in favor of the previous question, signify by saying yes.

MR. COOPER: We already voted on it.

(A chorus of "yeses.")

MR. BALDWIN: Those opposed, nay.

(No response.)

MR. BALDWIN: Abstentions?

(No response.)

MR. BALDWIN: As someone pointed out, we had already voted on it, but we went through it for the record.

We are now voting on the Love amendment. Those in favor, signify by a show of hands.

MR. COOPER: Nineteen.

MR. BALDWIN: Those in opposition, likewise.

MR. COOPER: Seventeen.

MR. BALDWIN: Abstentions?

MR. COOPER: One.

MR. BALDWIN: The Love amendment was adopted.

Delegate Schrag?

MR. SCHRAG: My motion is to insert where the paragraph used to be everything that was there except putting the word "or" between "searches" and "seizures" and deleting "or compulsory testimony."

Since I've already spoken to it, I won't take up more of the delegates' time with a speech in favor of it.

MS. HARRIS: Point of order.

(Pause.)

MR. BALDWIN: Delegate Schrag, a point of order has